Remarks and Arguments

Claims 1-19 are pending in this application. Claims 1 and 5 have been amended herein to particularly point out the invention. Support for these amendments may be found in the claims as originally filed and in the specification on page 8, lines 1-2, as well as in figures 1 and 2. New claim 20 has also been added to particularly point out the invention. Support for this new claim is found in the claims as originally filed and in the specification on page 10, lines 6-7.

35 U.S.C. § 102

1. The Anticipation Standard

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

2. U.S. Patent No. 5,203,367

Claims 1, 5, 12-14 and 16-19 stand rejected as allegedly anticipated by U.S. Patent No. 5,203,367 (hereinafter "Akai"). According to the Office, Akai discloses a dispenser cartridge that is capable of being installed into a dispensing apparatus. The Office believes that the dispenser includes a reservoir, an inlet, an outlet, a fill tube a means for gating gas (61) and a fill valve. The Office also alleges that the cross sectional symbol used in Akai shows the tank to be made of metal. Applicants respectfully traverse the rejection.

To begin, Applicants do not understand the Office's comments with respect to the cross sectional symbol used in Akai. Applicants do not understand why a cross sectional view necessitates that the tank be made of metal. Applicants respectfully request that the Office elaborate on its position so that an appropriate response may be provided. Notwithstanding this concern Applicants believe the remarks provided below will be deemed sufficient to overcome this rejection.

Applicants note that Akai does not disclose a means for gating gas into or out of either said fluid reservoir or said fill tube assembly to substantially equalize pressure to that of the ambient environment, as currently recited in claims 1 and 5 (claims 12-14

and 16-19 depend on either claim 1 or claim 5). In this regard Applicants note that Akai states:

> The conveyor is accommodated in a closed aseptic chamber 21. The chamber 21 serves to separate a required packing work space from the outside air, and is filled with aseptic air and maintained at a slightly increased pressure. (Column 2, lines 10-14) . . .
>
> The aseptic chamber 21 is in communication with the supply tank 32 by an equalizing pipe 61. If the conveyor 11 is not enclosed in the aseptic chamber 21 but exposed to the outside air, the equalizing pipe need not be provided. (Column 2, lines 49-54)

Thus the system disclosed by Akai is a closed one if the equalizing pipe is included and the purpose of the pipe is to "equalize" "the slightly increased pressure" of the aseptic air filling chamber 21 and supply tank 32. The pipe therefore does not equalize pressure with the ambient environment and thus Akai does not disclose each and every element of the claim. Accordingly, it cannot anticipate the claims. Applicants respectfully request withdrawal of the rejection.

3. U.S. Patent No. 5,480,063

Claims 1, 5, 11, 13-15 and 17-19 stand rejected as allegedly anticipated by U.S. Patent No. 5,480,063 (hereinafter "Keyes"). According to the Office Keyes discloses a dispenser cartridge that is capable of being installed into a dispensing apparatus as claimed, with the dispenser including a reservoir, an inlet, an outlet, a fill tube, a means for gating gas (40) and a fill valve. The Office also alleges that the cross sectional symbol used in Figure 6 of Keyes shows the tank 40 to made of metal.

Applicants reiterate their remarks above regarding the conclusion reached by the Office that the cross sectional symbol indicates that the tank is made of metal. Clarification is again requested. Applicants also note that there is no Figure 6 in Keyes.

Turning to the remaining rejections in view of this reference, Applicants note that the structure (40) which the Office points to as a "gas gate," is not a gas gate, but rather a "tube extension" topped by a "meniscus sensor (42)." (See column 4, lines 54-57). Moreover, there is nothing in Keyes to suggest that this "tube extension" is open to the atmosphere. Indeed, the exact opposite is explicitly disclosed in Keyes. Keyes states: "The fluid chamber 12 is a closed tank which is not vented" (column 4, lines 14-15). At

column 2, lines 45-48 Keyes further states: "The fill tube forms a closed circuit with the fluid reservoir thereby eliminating the need for venting systems." Applicants believe that Keyes does not teach each and every element of the claimed invention and thus does not anticipate the claims.

Applicants respectfully request withdrawal of these rejections in view of the comments provided above.

35 U.S.C. § 103

1. The Prima Facie Standard

MPEP § 2143 provides the standard required to establish a prima facie case of obviousness. "First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references combined) must teach or suggest all the claim limitations."

The motivation to make the claimed invention and the reasonable expectation of success must both be found in the prior art, not the applicant's disclosure. *In re Vaeck*, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). The references must be considered as a whole and must suggest the desirability, and thus the obviousness of making the combination. *Hodosh v. Block Drug Col, Inc.*, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986); MPEP § 2141. The Patent and Trademark Office (PTO) bears the burden of initially establishing a prima facie case of obviousness. MPEP § 2142. The PTO has not met its burden in the instant case.

2. Akai and Healy

Claims 2, 3, 6, 8, and 9 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Akai in view of U.S. Patent No. 6,554,881 (hereinafter, "Healy"). According to the Office Akai discloses a dispenser with a vent to an aseptic area substantially as claimed, but does not disclose the use of a polyethylene filters in the vents. The Office believes, however, that Healy teaches the use of polyethylene filters for the purpose of preventing the spread of contaminants and thus concludes it would have been obvious to one of ordinary skill in the art, at the time the invention was made,

to provide the dispenser of Akai with the polyethylene filter taught by Healy in order to prevent the spread of contaminants. Applicants respectfully disagree.

Claims 2, 3, 6, 8, and 9 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants first note for the reasons stated above regarding anticipation, that Akai does not teach each and every element of the claimed invention. Nothing in Healy cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly, Applicants note that a skilled artisan would not be motivated to combine Akai with Healy as the Office suggests. The Office admits that the system in Akai is aseptic (see Akai at column 2, lines 10-14). Thus there would be no need to remove contaminants as the Office suggests, because the system is closed and aseptic. Akai therefore suggests a feasible alternative way of "removing contaminants," and thus there would be no motivation to make the suggested combination. Because a skilled artisan would not have been motivated to combine Akai with Healy at the time the invention was made, the claims are not prima facie obvious.

For both reasons provided above Applicants respectfully request withdrawal of the rejection.

3. Akai and Wade

Claims 2, 3, 6, 8, and 10 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Akai in view of U.S. Patent No. 6,073,812 (hereinafter, "Wade"). The Office believes that Akai discloses a vent to an aseptic area substantially as claimed, but admits that Akai does not teach the use of Teflon filters. According to the Office, Wade teaches the use of Teflon filters in dispensing vents for the purpose of preventing the spread of contaminants. The Office concludes it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Akai with the Teflon filters of Wade to prevent the spread of contaminants.

Claims 2, 3, 6, 8, and 10 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants first note for the reasons stated above regarding anticipation, that Akai does not teach each and every element of the claimed invention. Nothing in Wade cures this defect. Therefore the combination suggested by the Office

does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly, Applicants note that a skilled artisan would not be motivated to combine Akai with Wade as the Office suggests. The Office admits that the system in Akai is aseptic (see Akai at column 2, lines 10-14). Thus there would be no need to remove contaminants as the Office suggests, because the system is closed and aseptic. Akai therefore suggests a feasible alternative way of "removing contaminants," and thus there would be no motivation to make the suggested combination. Because a skilled artisan would not have been motivated to combine Akai with Healy at the time the invention was made, the claims are not prima facie obvious.

For both reasons provided above Applicants respectfully request withdrawal of the rejection.

4. Keyes and Healy

Claims 2, 3, 6, 8, and 9 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Keyes in view of Healy. According to the Office Keyes discloses a dispenser with a vent to atmosphere 40 substantially as claimed. The Office admits, however, that Keyes does not teach the use of a polyethylene filter. The Office believes that Healy teaches the use of polyethylene filters to prevent the spread of contaminants and thus concludes that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Keyes with the polyethylene filter of Healy.

Claims 2, 3, 6, 8, and 9 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants note for the reasons stated above regarding anticipation, that Keyes does not teach each and every element of the claimed invention. Nothing in Healy cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly Keyes discloses that the fluid chamber is a closed tank which is not vented, but is charged with an inert gas, such as nitrogen, to prevent the reaction with the liquid being dispensed (column 2, lines 14-18). Given that Keyes suggests the importance of using an inert gas in a closed pressurized system there would be no

reasonable expectation of success in adding a Teflon filter to the system of Keyes. Adding a vent would release the nitrogen gas and thus allow the liquid to react with the atmosphere. The suggested combination is therefore not prima facie obvious.

For both reasons set forth above withdrawal of the rejection is respectfully requested.

5. Keyes and Wade

Claims 2, 4, 6, 8, and 10 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Keyes in view of Wade. The Office believes that Keyes discloses a dispenser with a vent substantially as claimed, but admits that Keyes does not disclose use of a Teflon filter. The Office alleges that Wade teaches the use of Teflon filters in dispensing vents for the purpose of preventing the spread of contaminants. The Office concludes that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Keyes with the Teflon filter of Wade. Applicants respectfully disagree.

Claims 2, 3, 6, 8, and 10 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants note for the reasons stated above regarding anticipation, that Keyes does not teach each and every element of the claimed invention. Nothing in Wade cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly Keyes discloses that the fluid chamber is a closed tank which is not vented, but is charged with an inert gas, such as nitrogen, to prevent the reaction with the liquid being dispensed (column 2, lines 14-18). Given that Keyes suggests the importance of using an inert gas in a closed pressurized system there would be no reasonable expectation of success in adding a Teflon filter to the system of Keyes. Adding a vent would release the nitrogen gas and thus allow the liquid to react with the atmosphere. The suggested combination is therefore not prima facie obvious.

For both reasons set forth above withdrawal of the rejection is respectfully requested.

6. Keyes and Tan

Claim 7 stands rejected under 35 U.S.C. § 103 as allegedly unpatentable over Keyes in view of U.S. Patent No. 6,793,102 (hereinafter "Tan"). According to the Office Keyes discloses a dispenser with a vent to the atmosphere substantially as claimed, but admits that Keyes does not disclose a pressure release valve. The Office believes that Tan teaches the use of a pressure release vent for the purpose of maintaining slight pressure on the reservoir to assist in dispensing. The Office concludes that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Keyes with a pressure release valve as suggested by Tan. Applicants respectfully disagree.

Claim 7 depends on claim 5 as amended herein. Accordingly, Applicants note for the reasons stated above regarding anticipation, that Keyes does not teach each and every element of the claimed invention. Nothing in Tan cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly Keyes discloses that the fluid chamber is a closed tank which is not vented, but is charged with an inert gas, such as nitrogen, to prevent the reaction with the liquid being dispensed (column 2, lines 14-18). Moreover the fluid dispenser in Tan is maintained at atmospheric pressure (Abstract). Adding a vent would release the nitrogen gas and thus allow the liquid to react with the atmosphere. Given that Keyes suggests the importance of using an inert gas in a closed pressurized system and Tan suggests a fluid dispenser at atmospheric pressure there would be no reasonable expectation of success in adding a pressure release vent to the system of Keyes. The suggested combination is therefore not prima facie obvious.

For both reasons set forth above withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account.

Respectfully submitted

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